did not incorporate the arbitration clause of the charterparty.

The second ground for staying proceedings which was raised by counsel for the defendants was that the court had no jurisdiction to try the suit by virtue of the express provisions of section 23 of the Courts of Judicature Act, 1964. I do not think there was merit in this ground as I am of the view that the provisions of section 24(b) of the Act are sufficiently wide to enable the court to entertain the suit. There was no dispute as to the fact that the High Court of Justice in England had jurisdiction over the matter by virtue of the United Kingdom Administration of Justice Act, 1956. Since there is a specific provision contained in section 24 conferring this jurisdiction on the High Court in Malaya there can in my view be no doubt that the court has jurisdiction to entertain this matter.

With regard to the third ground urged to stay proceedings, the bill of lading stipulated that the cargo be delivered at the port of Bombay "unto TO ORDER OF UNITED ASIAN BANK BERHAD." It was clear that the plaintiffs or their assigns were the consignees (*vide* PA-1 exhibited to Enclosure 21). It was also clear on the authorities, *The Stettin,*[3] *Sze Hai Tong Bank Ltd.* v. *Rambler Cycle Co. Ltd.*[4] and *Barclays Bank Ltd.* v. *Commissioners of Customs & Excise,*[5] that, so long as the contract for the carriage of goods by sea (which is evidenced by the bill of lading) is not discharged, the bill of lading "remains a document of title by indorsement and delivery of which the rights of property in the goods can be transferred" and a shipowner who delivers without production of the bill of lading does so at his peril. That the plaintiffs were in possession of the bill of lading was not challenged by the defendants. In fact it was clear from the letters of hypothecation and security letters, PA2 to PA6 exhibited to the affidavit (Enclosure 21) of the Assistant General Manager of the plaintiff bank, that the plaintiffs were pledgees for value of the bill of lading. The defendants alleged that the bill of lading had been discounted as security for advances made to the shippers/pledgors, Patel Holdings Sdn. Bhd., but this allegation was denied by the plaintiffs who averred that the bill of lading was delivered to the plaintiffs in proper set thus giving them "property sufficient to enable them to maintain the action" and further that as named consignees in the bill of lading the plaintiffs had domain over the goods. I accepted the contention that the plaintiffs had in consequence the *locus standi* to bring the action.

In the result, and, no case having been made out for the suit to be struck out under Order 25 rule 4, I dismissed the application in respect of all its first four prayers and ordered the costs, in the circumstances of this case, to be costs in the cause.

The application in Admiralty Suit No. 2262 of 1978 was similar to that before me and as the same arguments applied I dismissed it similarly with regard to the substantive prayers and also ordered that the costs of the application be costs in the cause.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.; Allen & Gledhill.*

ABDUL MAJEED v. DATO' SULAIMAN

[O.C.J. (Ajaib Singh J.) February 3 & September 4, 1980]
[Muar — Civil Suit No. 88 of 1979]

Practice and Procedure — Statement of claim — Vexatious and frivolous — Statement struck out — Rules of the Supreme Court 1957, O. 25 r. 4.

The plaintiff in this case sought to enforce an agreement made between the plaintiff and the defendant in 1968 and in regard to a sale of the house known as No. 1 Jalan Sisi, Muar.

The defendant applied to have the statement of claim struck out on the ground that it disclosed no reasonable cause of action, it was frivolous and vexatious and an abuse of the process of the court.

Held: the plaintiff did nothing to enforce his claim that the defendant had made a promise to sell the premises to him until the last minute which clearly showed that he had brought the present action in order to embarrass the plaintiff and delay his building project.

SUMMONS-IN-CHAMBERS.

E. Ramasamy for the applicant/defendant.

Elyas Majeed for the respondent/plaintiff.

Cur. Adv. Vult.

Ajaib Singh J.: This was an application by the defendant to have the statement of claim struck out under Order 25 rule 4 on the ground that it disclosed no reasonable cause of action, it was frivolous and vexatious and that it was an abuse of the process of the court.

The plaintiff's claim was for "specific performance of the agreement between the plaintiff and the defendant made sometime in the year 1968 and subsequently regarding sale/lease of a house known as No. 1 Jalan Sisi, Muar, Johore and damages". The statement of claim is not very lengthy. Instead of trying to paraphrase it I think I shall set it out here in full.

"STATEMENT OF CLAIM

The plaintiff is occupant of shophouse No. 1, Jalan Sisi, Muar which premises together with the land on which it is situated is hereinafter referred to as the 'said premises'. He had been in occupation of same for the past 18 years.

2. Sometime in the year 1964, the registered owner of the said premises, a person by the name of Kanagasapai, negotiated with the plaintiff for sale of the said premises to the plaintiff. While such negotiations were in progress the said Kanagasapai died and his successor-in-title sold the same premises to the defendant.

3. The defendant was at all material times aware of the negotiations between the plaintiff and the deceased, Kanagasapai and his successor-in-title. The said premises formed part of a larger piece of land Lot Nos. 385 and 907, Johore Grant Nos. 3044 and 3689 which the defendant intended to buy and the defendant informed the plaintiff that if the plaintiff would abandon his right to buy the said premises and forbear his interests therein, the defendant would subsequently sell to the plaintiff the said premises for a price of $18,000 and subsequently increased to $25,000 or thereabouts in consideration of such forbearance.

4. On various occasions the plaintiff approached the defendant to enter into the formal Sales Agreement in respect of the said premises but the defendant assured the plaintiff that the delay was inevitable as the opportune time for sale documentation would be when the other pieces of land contained in the larger piece are excised and alienated. In the meanwhile, the defendant assured the plaintiff that he could continue as a tenant and that in any event even if the sale did not materialise the plaintiff would be granted a lease of the said premises for 30 years.

5. In continuation of the various verbal approaches made between the plaintiff through the defendant the plaintiff wrote on the 18th October, 1976 a letter to the defendant reminding him of his obligations to sell the said piece of land which the defendant acknowledged.

6. Nevertheless, in breach of the agreement with the plaintiff the defendant filed an application before the Rent Tribunal, Muar for recovery of the said premises.

7. The plaintiff has been and are still willing, able and ready to pay the said price as stipulated above and to comply with the other requirements.

8. In the above premises, the plaintiff claims:—

The Plaintiff's claim is against the defendant for:—

(a) specific performance of the Agreement between the plaintiff and the defendant made sometime in the year 1968 and subsequently regarding sale/lease of a house known as No. 1, Jalan Sisi, Muar, Johore

(b) damages in lieu of or addition to a specific performance.

Dated this 22nd day of July, 1979."

In all the circumstances of this case I was of the view that the plaintiff had not acted *bona fide* in bringing this action against the defendant. The statement of claim made vague allegations against the defendant regarding the so-called agreement "made sometime in the year 1968 and subsequently." The plaintiff's action clearly appeared to be an attempt to frustrate the defendant's intention of developing his property. The defendant has had his plans for a 4-storey building approved and has arranged for a bank loan to finance the project. He has also made an application under section 18 of the Control of Rent Act, 1966 to the Rent Tribunal where the application is pending after having been adjourned twice. The final adjournment was granted on July 17, 1979 to August 14, 1979. However just one day earlier on August 13, 1979 the defendant was served with the writ of summons in this case. When the application came up before the Rent Tribunal for hearing on August 14, 1979 the Tribunal adjourned the hearing *sine die* on the ground that the application should not be heard until the outcome of the civil suit. The plaintiff did nothing to enforce his claim that the defendant had made a promise to sell the premises to him until this last minute which clearly shows that he has brought this action in order to embarrass the plaintiff and delay his building project. In the circumstances therefore I held that the defendant was entitled to his application on the ground that the plaintiff's action was malicious, vexatious and an abuse of the process of the court. I accordingly struck out his statement of claim and dismissed his action against the defendant.

Order accordingly.

Solicitors: *E. Ramasamy & Co.; Elyas Majeed & Co.*

SIOW CHOO FOO v. LEE PENG LAY & ANOR.

[O.C.J. (Yusof Abdul Rashid J.) November 25, 1980]
[Muar — Civil Suit No. 213 of 1977]

Damages — Quantum — Multiple injuries including injury to liver and eye — $11,500 as general damages.

Road Traffic — Duty of care — Stationary lorry with tail lights off.

The plaintiff in this case suffered personal injuries and loss as a result of a collision between his motorcycle and the defendant's lorry. The court accepted the plaintiff's evidence that the lorry was stationary with its rear lights switched off when the collision took place.

The plaintiff suffered the following injuries: (1) laceration on left forehead, 3½ extending to left upper and lower eye-lids — the plaintiff could not open his left eye; (2) laceration of 1 in. on left upper lip; (3) laceration of ½ in. on lower lip; (4) puncture wound at medial end of left clavicle; (4) superficial abrasion on right anterior chest. He also had to undergo surgery. He sustained laceration of 3 in. on the superior surface of liver on right lobe — it was bleeding. There was blood in the peritoreal cavity and a slight contusion of the greater curvature of the stomach. He was hospitalised for 14 days and was unable to work for 70 days. He was earning wages of $300 a month.

Held: (1) to leave a stationary lorry on the road on a dark night with its tail lights off was potentially a dangerous act and an act lacking the duty of care owed to the other users of the road; the first defendant was therefore to blame for the collision;

(2) the plaintiff too owed a duty of care for his own safety. On being blinded by the glare of the headlights of the on-coming vehicle, it would be prudent for the plaintiff to slow down his speed considerably, or even to pull to the side for safety. In this case he "did not in his own interest take reasonable care of himself and contributed by his want of care, to his own injury";

(3) the first defendant was 2/3 to blame and the plaintiff was 1/3 to blame for the accident;

(4) special damages of $700 and a global sum of $11,500 as general damages based on 100% liability on the defendants was awarded to the plaintiff.

Cases referred to:-

(1) *Lim Kar Bee* v. *Abdul Latif* [1978] 1 M.L.J. 109, 116 & 117.

(2) *Donoghue* v. *Stevenson* [1932] A.C. 562.

(3) *Davies* v. *Swan Motor Co. (Swansen) Ltd.* [1949[2 K.B. 291.

(4) *Nance* v. *British Columbia Electric Railway Co. Ltd.* [1951] 2 All E.R. 448.

CIVIL SUIT.

Tee Eng Tuan for the plaintiff.

S.S. Mukar for the defendants.

Cur. Adv. Vult.

Yusof Abdul Rashid J.: This was a claim by the plaintiff for damages for personal injuries and loss said to be caused by the negligence of the first defendant.

It was common ground that on December 7, 1976 at about 9.00 p.m. the plaintiff was riding motorcycle No. JG 3847 along the Sungai Mati/Bukit Kangkar Road and was going in the direction of Bukit Kangkar. A motor lorry No. JL 4563 was parked by the first defendant, who was the servant or agent of the second defendant, near an electric post about the 7¼ milestone. At the time and place in question a collision took place between the said motorcycle and the said motor lorry as a result of which the plaintiff